

her. She only took the present proceedings when the respondent reduced the amount of the maintenance. She now hopes that the Court would order the respondent to pay her a gross sum by way of maintenance and in fact she has in her petition asked for \$10,000. She says that the respondent received \$30,000 Provident Fund and \$10,000 arrears of salary for the occupation period. She is under the belief, quite erroneously, that the respondent is well off. I think the primary purpose of the present proceedings is not to ask for relief from the marriage but to get a gross sum for her maintenance. The Court is not to be used as a place to which people can come for redress just when it suits them. If authority is needed for this principle it can be found in the following cases—*Rickard v. Rickard & Bond*<sup>(1)</sup> and *Llewellyn v. Llewellyn*<sup>(2)</sup>.

I am clearly of the opinion that there has been unreasonable delay in presenting the petition and I see no reason for exercising my discretion in the petitioner's favour. The petition is therefore dismissed.

The respondent in his answer alleges that the petitioner has since the marriage treated him with cruelty and he prays that the marriage be dissolved. The respondent, however, has failed to prove cruelty and I make no order.

*Petition dismissed.*

Solicitors: *Ong Swee Keng & Co.; Tan, Rajah & Cheah.*

# MURUGESAN v. KRISHNASAMY & ANOR.

[O. C. J. (Thomson C.J.) March 1, 1957]

[Ipoh—Civil Suit No. 46 of 1956]

*Contract—Several distinct promises made for one lawful consideration—One of promises unenforceable on ground of illegality—Whether other promises can be enforced—Contracts (Malay States) Ordinance, 1950, ss. 24, 25, 57 and 66.*

In this case the defendants were in occupation of land under Temporary Occupation Licence. They subsequently applied for E.M.R. titles in respect of the land. The defendants then entered into an agreement with the plaintiff which *inter alia* recited that the defendants had applied for state land and provided that for the considerations stated the defendants agreed to execute valid transfers of the lands to the plaintiff as soon as titles were issued by the Collector of Land Revenue. The agreement further provided that in the meanwhile the plaintiff was to enter on the lands and enjoy the proceeds thereof. Subsequently the applications of the defendants for E.M.R. titles were refused. The plaintiff thereupon claimed the return of the money paid by him as the contract had become impossible of performance. The defendants pleaded that as the agreements were attempts to sell and purchase rights under Temporary

A Occupation Licences and were therefore unlawful the contract was void for illegality and the loss must fall where it lies.

Held: (1) the promises to the effect that pending the execution of transfers the purchaser was to enter into the lands and occupy it was an attempt to transfer to him at least a part of the vendors' rights under the Temporary Occupation Licences and was therefore void;

B (2) the illegal promise in the agreements can be severed from the other provisions of the agreements and the agreements are good and binding contracts for the sale and purchase of the lands;

(3) in the events which have occurred the contracts have become void by reason of supervening impossibility and the plaintiff was entitled to recover his purchase money.

C Cases referred to:—

(1) *Hee Cheng v. Krishnan* (1955) M.L.J. 103.

(2) *Pickering & Anor. v. Ilfracombe Rly. Co.* L.R. 3 C.P. 235, 250.

D (3) *Bank of Australasia v. Thomas Chaplin Breillat* 6 Moore P.C. 152, 201.

(4) *Putsman v. Taylor* (1927) 1 K.B. 637, 639, 640.

(5) *Bennett v. Bennett* (1952) 1 All E.R. 413, 421.

E CIVIL SUIT.

*H. T. Ong* for the plaintiff.

*J. R. Devadas* for the defendants.

F Thomson C.J.:—In so far as they seem to be material the facts of this case are not in serious dispute.

For some time the first defendant was in occupation of two acres of land near Huntly Estate under Temporary Occupation Licence and the second defendant who is his wife was in occupation of another two acres of land nearby under a similar licence. It is not quite clear when the defendants first came into occupation of these pieces of land but their present licences are dated 23rd August, 1949.

G In November, 1949, each of the defendants applied under Rule 2 of the Land Rules for E.M.R. titles in respect of the pieces of land they were occupying and on 25th October, 1951, in connection with these applications each defendant was asked to deposit a sum of \$205.50 for survey fees and so forth. These deposits were paid a few days later on 1st November.

I Ultimately on 25th February, 1955, both defendants were informed that their applications had not been approved and that their deposits would be refunded on application. It is in evidence that the reason for the applications not being approved was that the pieces of land in question fell within the

area of the Trans-Perak Irrigation Scheme and that since the inauguration of that Scheme there could be no question of the land which is State land being alienated to anyone.

In the meantime the plaintiff had entered into negotiations with the defendants in connection with the land and on 21st February, 1953, three documents were drawn up and executed.

The first of these documents was an agreement between the plaintiff and the first defendant. This recited *inter alia* that the first defendant had applied for two acres of State land and provided that in consideration of a sum of \$1,370 the first defendant agreed to execute a valid transfer of the land to the plaintiff as soon as title was issued by the Collector. There were a number of ancillary provisions the only one of which is of importance being the following :—

"3. In the meanwhile the purchaser shall enter upon the said land and enjoy the proceeds thereof for the sole use and benefit of the purchaser from the date hereof."

The second document was an agreement between the plaintiff and the second defendant and was in similar form except that only one acre of the land in question was to be transferred for a price of \$680.

The third document was a promissory note for \$2,050 payable by demand made by the first defendant in favour of the plaintiff.

It is not in dispute that the sums of \$1,370 and \$680 were in fact paid by the plaintiff although there is some controversy which is immaterial to the present dispute as to whether these sums were paid in one lump sum or whether they were paid in instalments and as to whether they were paid wholly in cash or partly in cattle. Again, it is not in dispute that the plaintiff went into occupation of the land and remained in occupation for about two years although it is in controversy as to whether this occupation commenced at or about the time of the agreement or some eighteen months earlier. In any event, after two years the plaintiff went out of occupation and the defendants resumed occupation.

The plaintiff's case is that performance of the contract on the part of the defendants having become impossible by reason of an event which they could not prevent, the contract is void by reason of section 57 of the Contract Ordinance and that accordingly by reason of section 66 he is entitled to the return of his money.

The case for the defendant is that Clause 3 of the agreement which has been quoted amounts to an attempt to sell and purchase rights under Temporary Occupation Licences and is therefore unlawful (See *Hee Cheng v. Krishnan*<sup>(1)</sup>). It follows therefore that

A the contract is void not by reason of section 57 but by virtue of section 25 and that the parties being *in pari delicto* the loss should fall where it lies.

B There can be no doubt that the two agreements dated 21st February, 1953, were either agreements which are void or contracts which have become void, either they were void *ab initio* for illegality or they subsequently became void by reason of impossibility of performance.

C I have been unable, as apparently were counsel, to discover any reported case altogether on all fours with the present one. In the circumstances, the case calls for careful analysis and, in this connection, I think it will assist in attaining clarity if I disregard for the time being the question of supervening impossibility and ask myself what the position would be had no such question arisen.

D The consideration of an agreement is unlawful if it is of such a nature that if permitted it would defeat the provision of any law and where the consideration is unlawful the agreement is void (Contracts Ordinance, Section 24). Moreover, if any part of any one or any part of several considerations for a single object is unlawful agreement as a whole is void (section 25). E In the case of *Hee Cheng v. Krishnan*<sup>(1)</sup>, *supra* I held that an agreement which was an attempt to sell and to purchase a licensee's rights under a Temporary Occupation Licence was an agreement which fell within the scope of section 24 of the Ordinance and was therefore void. That decision has not so far been challenged and on reflection I see no reason to doubt its correctness.

F Before proceeding further I would observe that it involves a certain if not an undue straining of language to describe the agreements in question in the present case as agreements for sale and purchase of rights under a Temporary Occupation Licence. G Primarily, they are clearly agreements for sale and purchase of the right, title and interest in pieces of land. Nevertheless, they do contain the clause which has been quoted to the effect that pending the execution of transfers the purchaser is to enter into the land and occupy it and clearly of course this amounts to an attempt to transfer to him, at least, a part of the vendors' rights under the Temporary Occupation Licences.

H I But does that render the agreements as a whole void?

It is well settled law that if several distinct promises are made for one and the same lawful consideration and one or more of these promises is

such as the law will not enforce that will not of itself prevent the rest from being enforceable.

The point was thus put by Willes J., in the case of *Pickering and another v. The Ilfracombe Railway Co.*<sup>(2)</sup> :—

"The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but, where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good."

It was put slightly otherwise by Mr. Leigh in the case of *The Bank of Australasia v. Thomas Chaplin Breillat*<sup>(3)</sup> .—

"It has always been held that, when there are contained in the same instrument distinct engagements by which a party binds himself to do certain acts, some of which are legal, and some illegal, at common law, the performance of those which are legal may be enforced, though the performance of those which are illegal cannot."

The matter is dealt with in somewhat greater detail by Salter J., in the case of *Putsman v. Taylor*<sup>(4)</sup> where he said :—

"If a promisee claims the enforcement of a promise, and the promise is a valid promise and supported by consideration, the Court will enforce the promise, notwithstanding the fact that the promisor has made other promises, supported by the same consideration, which are void, and has included the valid and invalid promises in one document. But if the promise sought to be enforced is invalid, as being in undue restraint of trade or for any other reason, the Court will not invent a valid promise by the deletion, alteration, or addition of words, and thus enforce a promise which the promisor might well have made, but did not make. The promise to be enforceable must be on the face of the document a separate promise, a separate compact, the subject of separate consideration and accord, the performance of which is independent of the performance of any other promises which the promisor may have made. If the promise is a separate promise and valid, the Court will enforce it. Whether it is separate or not depends on the language of the document. Severance, as it seems to me, is the act of the parties, not of the Court."

The latest discussion on the point is to be found in the case of *Bennett v. Bennett*<sup>(5)</sup> where Denning L.J., said :—

"If the void covenant goes only to part of the consideration, so that it can be ignored and yet leave the rest of the deed a reasonable arrangement between the parties, then the deed stands and can be enforced in every respect save in regard to the void covenant."

The agreements in the present case are in writing and it is well settled that the Court will not enquire into the adequacy of the consideration stated in such writing. In my opinion, they are to be read as if the clause relating to occupation of the land before transfer did not exist and they are good and binding contracts for the sale and purchase of the pieces of land in question for \$1,370 and \$680 respectively. These sums having been paid it follows that in the ordinary course of things, if the defendants had failed to give valid transfers of the lands, the plaintiff would have been entitled to specific performance or to damages for breach.

In the events which have occurred, however, the failure of the defendants to perform their side of the agreements has resulted from supervening impossibility. The contracts are therefore void by reason of section 57 of the Ordinance. It is, however, to be noted that it is not a case of agreements which are void and have never become contracts by reason of illegality but of contracts which have been avoided by circumstances such as are contemplated in section 57. I fail therefore to see any reason why the plaintiff should not recover the purchase money in accordance with section 66.

The second defendant, therefore, must refund to the plaintiff the sum of \$680.

There is, however, a certain amount of difficulty as to the promissory note which was executed by him contemporaneously with the two agreements. I am satisfied on the evidence that that note was in fact executed by the first defendant and that no circumstances of fraud attended its execution. On the other hand it was clearly given partly by way of collateral security for the performance of his own contractual obligation and partly by way of security for the performance of the contractual obligations of the second defendant.

In the circumstances justice will be done if judgment is entered against both defendants jointly for \$680 and against the second defendant for \$1,370 and I order accordingly. Judgment will also be entered against both defendants jointly for the taxed costs of the suit.

Order accordingly.

Solicitors : Cheang Lee & Ong; J. R. Devadas.

## G PUBLIC PROSECUTOR v. TAN CHYE SENG

[A. Cr. J. (Smith J.) October 25, 1957]

[K. L. — Criminal Appeal No. 37 of 1957]

*Criminal Procedure — Plea of autrefois acquit —*

*Multiplicity of proceedings — Criminal Procedure Code (Cap. 6) s. 302(i) — Courts Ordinance, 1948, 3rd Schedule — Res judicata.*

In this case after the accused had been acquitted on a charge of giving false information to a police officer, he was charged with giving the same information to the Registrar and Inspector of Motor Vehicles. The learned President of the Sessions Court accepted a plea of *autrefois acquit* and acquitted the accused. The Public Prosecutor appealed.

Held: (1) this further charge could have been considered at the same time as the first at the first trial and it would therefore be wrong to continue the proceedings and put the accused in jeopardy again;

(2) in the circumstances of the case the plea of *autrefois acquit* was valid.